

§ 120.523

13 CFR Ch. I (1–1–00 Edition)

the last interest paid-to-date up to the date of payment. If the Lender requests SBA to purchase after 120 days from the date of the earliest uncured payment default date, SBA will pay only 120 days of interest. For LowDoc loans, the interest paid to the Lender will be governed by the Supplemental Guarantee Agreement.

(c) *Payment to Registered Holder.* SBA will pay a Registered Holder all accrued interest up to the date of payment.

(d) *Extension of the 120 day period.* Before the 120 days expire, the SBA field office may extend the period if the Lender and SBA agree that the Borrower can cure the default within a reasonable and definite period of time or that the benefits from doing so otherwise will exceed the costs of SBA paying additional interest. If the 120 days have passed, only the AA/FA or designee can extend the period.

§ 120.523 What is the “earliest uncured payment default”?

The earliest uncured payment default is the date of the earliest failure by a Borrower to pay a regular installment of principal and/or interest when due. Payments made by the Borrower before a Lender makes its request to SBA to purchase are applied to the earliest uncured payment default. If the installment is paid in full, the earliest uncured payment default date will advance to the next unpaid installment date. If a Borrower makes any payment after the Lender makes its request to SBA to purchase, the earliest uncured payment default date does not change because the Lender has already exercised its right to request purchase.

§ 120.524 When is SBA released from liability on its guarantee?

(a) SBA is released from liability on a loan guarantee (in whole or in part, within SBA’s exclusive discretion), if any of the events below occur:

(1) The Lender has failed to comply materially with any of the provisions of these regulations, the Loan Guarantee Agreement, or the Authorization;

(2) The Lender has failed to make, close, service, or liquidate a loan in a prudent manner;

(3) The Lender’s improper action or inaction has placed SBA at risk;

(4) The Lender has failed to disclose a material fact to SBA regarding a guaranteed loan in a timely manner;

(5) The Lender has misrepresented a material fact to SBA regarding a guaranteed loan;

(6) SBA has received a written request from the Lender to terminate the guarantee;

(7) The Lender has not paid the guarantee fee within the period required under SBA rules and regulations;

(8) The Lender has failed to request that SBA purchase a guarantee within 120 days after maturity of the loan;

(9) The Lender has failed to use required SBA forms or exact electronic copies; or

(10) The Borrower has paid the loan in full.

(b) If SBA determines, after purchasing its guaranteed portion of a loan, that any of the events set forth in paragraph (a) of this section occurred in connection with that loan, SBA is entitled to recover any money paid on the guarantee plus interest from the Lender responsible for those events.

(c) If the Lender’s loan documentation indicates that one or more of the events in paragraph (a) of this section may have occurred, SBA may undertake such investigation as it deems necessary to determine whether to honor or deny the guarantee, and may withhold a decision on whether to honor the guarantee until the completion of such investigation.

(d) Any information provided to SBA prior to Lender’s request for SBA to honor its guarantee shall not prejudice SBA’s right to deny liability for a guarantee if one or more of the events listed in paragraph (a) of this section occur.

(e) Unless SBA provides written notice to the contrary, the Lender remains responsible for all loan servicing and liquidation actions until SBA honors its guarantee in full.

DEFERMENT, EXTENSION OF MATURITY AND LOAN MORATORIUM

§ 120.530 Deferment of payment.

SBA may agree to defer payments on a business loan for a stated period of

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time, and use such other methods as it considers necessary and appropriate to help in the successful operation of the Borrower. This policy applies to all business loan programs, including 504 loans.

§ 120.531 Extension of maturity.

SBA may agree to extend the maturity of a loan for up to 10 years beyond its original maturity if the extension will aid in the orderly repayment of the loan.

§ 120.532 What is a loan Moratorium?

SBA may assume a Borrower's obligation to repay principal and interest on a loan by agreeing to make the payments to the Lender on behalf of the Borrower under terms and conditions set by SBA. This relief is called a "Moratorium." Complete information concerning this program may be obtained from local SBA offices.

LIQUIDATION OF COLLATERAL

§ 120.540 What are SBA's policies concerning the liquidation of collateral and the sale of business loans?

(a) *Liquidation policy.* SBA or the Lender may liquidate collateral securing a loan if the loan is in default or there is no reasonable prospect that the loan can be repaid within a reasonable period.

(b) *Sale and conversion of loans.* Without the consent of the Borrower, SBA may:

(1) Sell a direct loan;

(2) Convert a guaranteed or immediate participation loan to a direct loan; or

(3) Convert an immediate participation loan to a guaranteed loan or a loan owned solely by the Lender.

(4) Sell direct and purchased 7(a) and 501, 502, 503 and 504 loans in asset sales. SBA will offer these loans for sale to qualified bidders by means of competitive procedures at publicly advertised sales. Bidder qualifications will be set for each sale in accordance with the terms and conditions of each sale.

(c) *Disposal of collateral and assets acquired through foreclosure or conveyance.* SBA or the Lender may sell real and personal property (including contracts and claims) pledged to secure a loan

that is in default in accordance with the provisions of the related security instrument (*see* §120.550 for Homestead Protection for Farmers).

(1) *Competitive bids or negotiated sales.* Generally, SBA will offer loan collateral and acquired assets for public sale through competitive bids at auctions or sealed bid sales. The Lender may use negotiated sales if consistent with its usual practice for similar non-SBA assets.

(2) *Lease of acquired property.* Normally, neither SBA nor a Lender will rent or lease acquired property or grant options to purchase. SBA and the Lender will consider proposals for a lease if it appears a property cannot be sold advantageously and the lease may be terminated on reasonable notice upon receipt of a favorable purchase offer.

(d) *Recoveries and security interests shared.* SBA and the Lender will share pro rata (in accordance with their respective interests in a loan) all loan payments or recoveries, including proceeds from asset sales, all reasonable expenses (including advances for the care, preservation, and maintenance of collateral securing the loan and the payment of senior lienholders), and any security interest or guarantee (excluding SBA's guarantee) which the Lender or SBA may hold or receive in connection with a loan.

(e) *Guarantors.* Guarantors of financial assistance have no rights of contribution against SBA on an SBA guaranteed or direct loan. SBA is not deemed to be a co-guarantor with any other guarantors.

[61 FR 3235, Jan. 31, 1996, as amended at 64 FR 44110, Aug. 13, 1999]

HOMESTEAD PROTECTION FOR FARMERS

§ 120.550 What is homestead protection for farmers?

SBA may lease to a farmer-Borrower the farm residence occupied by the Borrower and a reasonable amount of adjoining property (no more than 10 acres and seven farm buildings), if they were acquired by SBA as a result of a defaulted farm loan made or guaranteed by SBA (*see* the Consolidated Farm and Rural Development Act, 7